

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. E015 OF 2024

CANNON GENERAL INSURANCE (K) LIMITED... 1ST PLAINTIFF

CANNON LIFE INSURANCE (K) LIMITED 2ND PLAINTIFF

VERSUS

NIRMALLA KUMARI INDERJIT TALWAR (*The Administrator of the Estate of the late Amarnath Gianchand Talwar*) **1ST DEFENDANT**

SAFARI REALTY LLP 2ND DEFENDANT

VISHISHT INDERJIT TALWAR 3RD DEFENDANT

RULING

1. Before me for determination are two applications. By the first Notice of Motion dated 11th February 2025, the two (2) Plaintiffs pray for orders as follows:

1. The Defendants Defence or Defences filed herein be struck out and Judgment be entered for the Plaintiffs as prayed in the Amended Plaint;

2. Further, and/or alternatively, Judgment on admission be entered in favour of the Plaintiffs as prayed in the Plaint; and

3. Costs of the Application be provided for.

2. That First Application is supported by two (2) Affidavits sworn by Ms. Betty Kanyagia, the Plaintiff's Head of Legal & Corporate Services and is premised inter alia, on the grounds that:

- i. The Defendants have failed to serve their defences upon the Plaintiffs within the prescribed time;**
- ii. There is no Application made by the Defendants before this Court to enlarge time for service of the said defences;**
- iii. There is no judicial reason to justify the said failure to serve or apply for enlargement of time;**
- iv. Subsequent to the filing of the present case, the 2nd Defendant has admitted that he witnessed the affixing of the 1st Plaintiff's company seal on all the instruments of transfer that affected the passing of land title from the 1st Plaintiff to the**

2nd Defendant's father as a bonafide purchaser for value; and

v. The 2nd and 3rd Defendants have admitted in Nairobi ELC No. 470 of 2024 that the said 2nd Defendant's father was not a bonafide purchaser for value concerning a portion of the Plaintiff's properties that were unlawfully transferred to the Defendants. As such, the 2nd and 3rd Defendants registration was obtained by fraud or fraudulent misrepresentation.

3. Vishisht Inderjit Talwar (the 3rd Defendant) is opposed to the grant of orders sought. In his Replying Affidavit sworn on 22nd February 2025, the 3rd Defendant avers that the application is filed in bad faith and is frivolous. The 3rd Defendant asserts that the Plaintiffs are seeking judgment on non-existent admissions and that the Defence and Counterclaim was served upon the Plaintiffs after 14 days of filing and that the delay was inadvertent.
4. The 3rd Defendant further avers that the Plaintiffs' attempt to extract isolated statements from the Defence and Counterclaim and to mischaracterize and present them as

admissions is legally untenable. He avers further that the transfers were lawful and that the Plaintiffs' suit is time-barred since it was instituted more than 6 years after the Share and Sale Agreement (SSA) was signed and transfers done.

5. By the Second Notice of Motion dated 30th July 2025, the three (3) Defendants on their part pray for orders that:

1. Spent;

2. An order be issued to transfer this suit to the Nairobi ELC for purposes of consolidation with Nairobi ELC Case No. E470 of 2024; Cannon General Insurance (K) Limited & Another -Vs- Safari Realty LLP and Another;

3. In the alternative, an order be issued directing that Nairobi ELC Case No. E470 of 2024; Cannon General Insurance (K) Limited & Another -vs- Safari Realty LLP and Another be treated as a test suit for purposes of determining the issues in this suit;

4. Following the issuance of prayer 3, an order be issued staying the proceedings in this suit pending the hearing and final determination of

Case No. E470 of 2024; Cannon General Insurance (K) Limited & Another -vs- Safari Realty LLP and Another;

5. Following the issuance of prayer 3 and 4, an order be issued that the final Judgment issued in Case No. E470 of 2024; Cannon General Insurance (K) Limited & Another -vs- Safari Realty LLP and Another be applied *mutatis mutandis* to this suit; and

6. The costs of this Application be provided for.

6. The Second Application is supported by two Affidavits sworn by Vishisht Inderjit Talwar (the 3rd Defendant) and is premised on the grounds inter alia, that:

- i. The Plaintiffs have instituted 2 separate suits over the same subject matter and seek overlapping prayers and reliefs over the same subject matter;**
- ii. The Plaintiffs and the Defendants have filed similar applications in the Nairobi suit and current suit which includes application for joinder of additional Defendants and Judgment on Admission by the Plaintiffs;**

- iii. Both suits stem from same cause of action namely the Share Sale Agreement dated 12th May, 2014;**
- iv. The Plaintiff's decision to institute 2 separate suits poses the real and dangerous risk of inconsistent findings by 2 Courts of equal jurisdiction; and**
- v. The orders sought by the Defendants are necessary to prevent a miscarriage of justice, eliminate an abuse of the Court process and achieve justice for all parties involved.**

7. The Plaintiffs are opposed to the orders sought in the second Application. In a Replying Affidavit sworn by the said Betty Kanyagia on 22nd September 2025, the Plaintiffs aver that where an application for judgment on admission is made, it ought to be determined without waiting for the determination of any other questions between the parties and that the said order can only be varied or set aside or reversed upon a formal application.

8. I have carefully perused and considered the two applications before the Court as well as the respective responses thereto. I have similarly perused and considered the submissions and authorities placed before the Court by the Learned Advocates representing the parties.
9. By the First Application before the Court, the Plaintiffs pray for orders that the Defendants' Statement of Defence and Counterclaim be struck out and that judgment on admission be entered in favour of the Plaintiffs. It is the Plaintiffs' case that despite filing the said Statement of Defence and Counterclaim, the Defendants had failed to serve the Plaintiffs with the same within the prescribed timelines. On their part, the Defendants did not deny that they had failed to serve their Statement of Defence and Counterclaim. It was however their case that the omission to do so was inadvertent and that they had corrected the same and served the Plaintiffs within two (2) days after noticing the mistake.
10. On striking out pleadings, Order 2 Rule 15 of the Civil Procedure Rules provides as follows:

“(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2). No evidence shall be admissible on an application under sub-rule (1)(a) but the application shall state concisely the grounds on which it is made.

11. Striking out of pleadings is frequently described by courts as a “draconian” act, representing a power of last resort that is exercised with the greatest care and caution. It is regarded

as a severe measure because it can deny a litigant their right to be heard, effectively closing the doors of justice before a matter can be fully adjudicated on merits.

12. As the Court of Appeal held in the case of ***Blue Shield Insurance Company Ltd -vs- Joseph Mboya Oguttu (2009) eKLR:***

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

13. In the matter before me, the Plaintiffs do not claim that the Statement of Defence and Counterclaim discloses no reasonable cause of action or defence and/or that the same is scandalous, frivolous or vexatious, they instead want the same dismissed on account that the same had not been served upon the Plaintiffs within the prescribed time. Guided by the principles that a Court of justice should aim at sustaining a suit rather than terminating the same by

summary dismissal, I was not persuaded that that was a ground upon which this court could exercise its discretion to strike out the Defence and Counterclaim.

14. The Plaintiffs have also sought for an order that judgement be entered in their favour following admissions made by the 2nd and 3rd Defendants in Nairobi ELC Case No. 470 of 2024 to the effect that one Inderjit Amaranath Gianchand Talwar was not a bonafide purchaser for value in regard to a portion of the Plaintiff's properties. On their part, the Defendants deny that they have made any admissions in the said suit.
15. In respect to judgment on admission, Order 13 Rule 2 of the Civil Procedure Rules provides thus:

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

16. As was stated in the case of ***Guardian Bank Limited -vs- Jambo Biscuits Kenya Limited (2014) eKLR:***

“The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the Civil Procedure Rules is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible. In such clear admission, like J.B. Havelock J stated in the case of 747 Freighter Conversion LLC -vs- One Jet One Airways Kenya Ltd & 3 Others HCCC No. 445 of 2012, there is no point in letting a matter go for a trial for there is nothing to be gained in a trial...”

17. In the matter herein, the Plaintiffs aver that the admissions by the Defendants are well captured at Paragraphs 29 to 33 of the Defendants’ Defence and Counterclaim filed in the said Nairobi ELC. Case No. 470 of 2024. I have gone through the said paragraphs of the Statement of Defence dated 16th January 2025 as annexed to the Supporting Affidavit of Ms. Betty Kanyagia. I was however unable to see any evidence of any admission. On the contrary, it was clear to me that the

Defendants have categorically denied allegations of fraud as imputed against themselves and that they aver that the suit properties were transferred properly and in accordance with the Share Sale Agreement.

18. Arising from the foregoing, I was unable to come to the conclusion that the Defendants had made a clear and unequivocal admission upon which judgment could be entered in favour of the Plaintiffs.
19. In the premises, I did not find any merit in the First Application dated 11th February 2025 and the same is hereby dismissed in its entirety.
20. Turning to the second Motion, the Defendants pray for orders that this suit be transferred to the Nairobi ELC for purposes of consolidation with Nairobi ELC Case No. E470 of 2024; Cannon Insurance (K) Limited & Another -vs- Safari Realty LLP & Another. In the alternative the Defendants pray for an order that the proceedings herein be stayed pending the hearing and determination of the said Nairobi ELC Case No. E470 of 2024 and that judgment in the said Nairobi case be applied mutatis mutandis to this suit.

21. It is the Defendants' position that the present suit and the said Nairobi ELC Case No. E470 of 2024 concern similar parties and that they both arise from the same cause of action and further that overlapping prayers and reliefs are sought over the same subject matter.
22. As to the place of trial, Order 47 Rule 6 of the Civil Procedure Rules provides as follows:

“(1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case."

23. As Waki J. (as he then was) stated in ***Jazira Agencies (Nrb) Limited -vs- Dolphin Stationers Ltd (Msa HCCC No. 477 of 1998):***

"The Court's power to transfer proceedings from one Court to another is a useful corrective to ensure that proceedings wherever began or whatever forum the Plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power which will be exercised having regard to all the circumstances of the case."

24. As it were, the existence of the suit instituted at the Environment and Land Court at Nairobi was not disputed. At Paragraph 4 of the Verifying Affidavit sworn by Ms. Betty Kanyagia on behalf of the Plaintiffs, the Head of Legal and Corporate Services depones as follows:

“4. I further confirm that there is a suit pending between the Plaintiffs and the 2nd and 3rd Defendants relating to other additional assets unlawfully acquired from the Plaintiffs directly by the said 2nd and 3rd Defendants being Nairobi ELC No. E470 of 2024.”

25. From the material placed before the Court, it was apparent that some two (2) weeks before they commenced these proceedings herein, the Plaintiffs had by way of a Plaint dated 15th November 2024 instituted the suit before the Environment and Land Court at Nairobi against the 2nd and 3rd Defendants. A perusal of the pleadings filed by the Plaintiffs reveal that the Plaintiffs seek among other things the cancellation of 18 property transfers executed in December 2014 between the 1st Plaintiff and one Inderjit Amaranath

Gianchand Talwar. The transfers concern properties which were subsequently registered in the name of the 2nd Defendant.

26. That was the same case as the proceedings before this court in which the Plaintiffs similarly seek the cancellation of transfers in regard to certain properties situated in Mombasa, Kilifi and Diani. It was clear from a further perusal of the pleadings that the suits arise from the same underlying transactions, the Share Sale Agreement dated 12th May 2014 and a Supplementary Agreement thereto dated 2nd October 2014.
27. Arising from the foregoing, it was apparent that both suits arise from the same commercial transaction between the same parties, that they concern the same sequence of events and are in relation to property transfers that were effected during the same period in December 2014. All the properties are said to have been transferred by the 1st Plaintiff to the Defendants. That being the case, it was further clear that the issues for determination in both suits are identical as the

same relate to the legal effect and implementation of the said Share Sale Agreement.

28. In the circumstances, I am persuaded that it is in the interest of all parties and in furtherance of judicial economy that the two matters be heard together before one Court. Maintaining separate proceedings as in the present case would cause unnecessary duplication of testimony and the attendant costs and pose the risk of conflicting decisions by 2 different judges.
29. Arising from the foregoing and given that the Nairobi case was instituted earlier, I find and hold that in order to ensure coherent adjudication, avoid inconsistent findings and promote judicial economy, it is only fair and just that this suit be transferred to the Environment and Land Court at Nairobi to be consolidated with Nairobi ELC Case No. E470 of 2024 for hearing and determination.
30. Accordingly, I hereby allow the Second Application dated 30th July 2025 in terms of prayer No. 2 thereof.
31. The costs of the two applications shall be in the cause.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 19th day of February, 2026

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Oyatsi Advocate for the Plaintiffs
- c) Ms. Amayo with Ms. Salim Advocate for the Defendants